



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

May 28, 2008

Mr. Scott W. Davis
Registered Agent
5731 Lyons View Pike
Suite 115
Knoxville, Tennessee 37919

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7007 2560 0003 3385 7565

Subject: DIRECTOR'S ORDER NO. WPC08-0102
HARRISON SPRINGS SUBDIVISION
KNOX COUNTY, TENNESSEE

Mr. Davis:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Stephanie Fisher at (615) 532-3634.

Sincerely,

Patrick N. Parker, Manager
Enforcement and Compliance Section

PNP:SJF

cc: DWPC – EFO-Memphis
DWPC – Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
EAGLE BEND REALTY, LLC,)	
)	
VAN TYLER EXCAVATING, INC., and)	DIVISION OF WATER
)	POLLUTION CONTROL
FARRAGUT DITCHING COMPANY,)	
INC.)	
)	
RESPONDENTS)	CASE NUMBER WPC08-0102

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

II.

Eagle Bend Realty, LLC, (hereinafter "Respondent Eagle Bend") is an active corporation licensed to conduct business in the state of Tennessee and is the owner/developer of Harrison Springs, a residential development in Knox county (hereinafter the "site"). Service of process may be made on Respondent Eagle Bend through Scott W. Davis, Registered Agent, at 5731 Lyons View Pike, Suite 115, Knoxville, Tennessee 37919.

III.

Van Tyler Excavating, Inc., (hereinafter "Respondent Tyler") is an active corporation licensed to conduct business in the state of Tennessee and is contracted by Respondent Eagle Bend to conduct construction activities at the site. Service of process may be made on Respondent Tyler through Van Tyler, Registered Agent, at 8633 Garrison Road, Knoxville, Tennessee 37931.

IV.

Farragut Ditching Company, Inc., (hereinafter "Respondent Farragut") is an active corporation licensed to conduct business in the state of Tennessee and is contracted by Respondent Eagle Bend to conduct construction activities at the site. Service of process may be made on Respondent Farragut through James R. White, Registered Agent, at 717 Kevin Lane, Lenoir City, Tennessee 37772

JURISDICTION

V.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the "Rule"). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

VI.

The Respondents are “persons” as defined by T.C.A. § 69-3-103(20) and as herein described, have violated the Act.

VII.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

VIII.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

IX.

Beaver Creek and its unnamed tributaries, described herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state

have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

X.

On June 20, 2004, a NOI, SWPPP, and appropriate fee were submitted to the Knoxville Environmental Field Office (KEFO) by Respondent Eagle Bend, requesting coverage under the TNCGP for construction activities at Schaeffer Heights Subdivision, later renamed Harrison Springs. The division issued coverage under the TNCGP for these activities on July 21, 2004, and assigned tracking number TNR130928.

XI.

On February 13, 2007, an application for a General ARAP for Utility Line Crossings was submitted to the KEFO by Respondent Eagle Bend, requesting written authorization for the installation of an eight inch sewer line across the unnamed tributary to Beaver Creek. The division issued written authorization for these activities on February 14, 2007.

XII.

On January 2, 2008, division personnel conducted a routine site inspection and noted that Erosion Prevention and Sediment Control (EPSC) measures had not been installed in accordance with the SWPPP, and had not been maintained. Sediment basin #2 had not been constructed to

retain sediment on site, sediment traps had not been installed, and the SWPPP had not been updated to reflect the actual site conditions.

XIII.

On February 22, 2008, division personnel conducted a site inspection and noted that sediment basin #2 had been relocated and was not constructed to retain sediment on site. Division personnel noted that sediment was migrating into the unnamed tributary to Beaver Creek (tributary #1) along Schaeffer road causing a condition of pollution. EPSC measures had not been properly installed and were not maintained, resulting in sediment deposits downstream of the sewer line crossing, causing a condition of pollution in the unnamed tributary to Beaver Creek at Thompson road (tributary #2). Check dams had not been installed within the diversion ditch as stated in the SWPPP and large areas had been cleared without EPSC measures in place. The SWPPP and NOC were not posted as required by the TNCGP.

XIV.

On February 28, 2008, division personnel issued a notice of violation (NOV) to the Respondents for violations noted during the January 2, 2008, and February 22, 2008, site inspections. The Respondents were instructed to stabilize the site, submit an updated SWPPP, and submit a plan to remove the sediment from unnamed tributaries #1 and #2. The Respondents were instructed to submit a written response within 14 days of receiving the NOV explaining how the items noted in the NOV had been addressed. A compliance review meeting (CRM) was scheduled for March 6, 2008, at the KEFO.

XV.

On February 29, 2008, division personnel conducted a site inspection, and noted that EPSC measures were unmaintained, allowing sediment deposition downstream of the stream crossing causing a condition of pollution in tributary #2.

XVI.

On March 6, 2008, a CRM was held at the KEFO, the Respondents stated that a metal plate had been placed over the outlet structure of sediment basin #2, and that check dams were being installed on the diversion ditch. The Respondents were instructed to submit an updated NOI, an updated SWPPP and a Corrective Action Plan (CAP) for the restoration of the two unnamed tributaries to Beaver Creek.

XVII.

On March 7, 2008, an updated NOI with the contractor's signatures was submitted to the division.

XVIII.

On April 3, 2008, division personnel conducted a site inspection and noted that EPSC measures were not in accordance with the SWPPP, were inadequate and were improperly maintained. The outlet structure of basin #1 was not constructed to retain sediment onsite, allowing sediment-laden runoff to be deposited into tributary #2. An attempt to seal the weir plate in basin #2 had failed, allowing sediment to migrate off site.

XIX.

During the course of investigation the division incurred DAMAGES in the amount of
FOUR HUNDRED FIFTY FIVE DOLLARS AND FORTY FOUR CENTS (\$455.44)

VIOLATIONS

XX.

By failing to comply with the terms and conditions of the TNCGP, the Respondents have violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XXI.

By causing a condition of pollution in the unnamed tributaries of Beaver Creek, the Respondents have violated T.C.A. Section 69-3-114(a), which states:

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XXII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents:

1. The Respondents shall, within 7 days of receipt of this ORDER AND ASSESSMENT, establish effective EPSC measures such that sediment is not allowed to leave the site. These professionally designed measures shall be chosen and installed in accordance with the Tennessee Erosion Control Handbook.
2. The Respondents shall, within 7 days of establishing effective EPSC measures, submit written documentation and photographic evidence indicating that these measures are in place. The Respondents shall submit this written documentation and photographic evidence to the Water Pollution Control Manager in the KEFO at Suite 3711

Middlebrook Pike, Knoxville, Tennessee 37921, and a copy to the Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243-1534.

3. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, submit a Corrective Action Plan (CAP) for the removal of the accumulated sediment from the unnamed tributaries to Beaver Creek. The CAP shall be submitted to the Water Pollution Control Manager in the KEFO at the address shown in Item 1. The Respondents shall correct any deficiencies the division finds and submit a corrected CAP within 30 days of notification of any deficiencies and no other ARAP authorization will be required.
5. The Respondents shall, within 90 days of approval, complete the activities outlined in the CAP and submit notification of completion to the division within 7 days.
6. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT pay DAMAGES to the division in the amount of FOUR HUNDRED FIFTY FIVE DOLLARS AND FORTY FOUR CENTS (\$455.44).
7. The Respondents shall pay a CIVIL PENALTY of THIRTY TWO THOUSAND DOLLARS (\$32,000.00) to the division, hereby ASSESSED to be paid as follows:

- a. The Respondents shall, within 30 days of entry of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00).
- b. If the Respondents fail to comply with Part XXII, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
- c. If the Respondents fail to comply with Part XXII, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
- d. If the Respondents fail to comply with Part XXII, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
- e. If the Respondents fail to comply with Part XXII, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
- f. If the Respondents fail to comply with Part XXII, item 5 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.

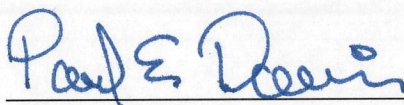
The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER AND ASSESSMENT. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a

minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER AND ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 28th day of May 2008.



Paul E. Davis, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115 allow the Respondent to secure review of this ORDER AND ASSESSMENT. In order to secure review of this ORDER AND ASSESSMENT, the Respondent must file a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this ORDER AND ASSESSMENT.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization. It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the state of Tennessee.

At the conclusion of a hearing the Board has the authority to affirm or modify, or deny the ORDER AND ASSESSMENT. This includes the authority to modify the penalty within the statutory confines.

Furthermore, in the event the Board finds that the Respondent is responsible for the alleged violations after a hearing, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.